

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:)	Chapter 11
)	
SEARS HOLDINGS CORPORATION, <i>et al.</i>,¹)	No. 18-23538
)	
Debtors.)	(Jointly Administered)
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**SUPPLEMENTAL LIMITED OBJECTION OF URSCHER DEVELOPMENT
CORPORATION (STORE NO. 7042) TO NOTICE OF CURE COSTS AND POTENTIAL
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES IN CONNECTION WITH GLOBAL SALE TRANSACTION**

Urschel Development Corporation (“UDC”) hereby files this supplemental limited objection (“Supplemental Objection”) in response to the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (Doc. No. 1731; “Cure Notice”) and *Notice of Assumption and Assignment of Additional Designatable Leases* (Doc. No. 3298; “Designation Notice”) and to

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRE Holding Corporation (4816). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

supplement its *Limited Objection of Urschel Development Corporation (Store No. 7042) to Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transaction* (Doc. No. 1844; “Cure Objection”). In support of this Supplemental Objection, Urschel states as follows:

BACKGROUND

1. On October 15, 2018 (“Petition Date”), Sears Holdings Corporation and certain of its affiliates (collectively, “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their businesses as debtors in possession.

2. Prepetition, on April 19, 1974, UDC, as landlord, and E. N. Maisel & Associates (“Maisel”), as developer, entered into a *Ground Lease* (“Ground Lease”) for approximately 9.61 acres of real estate, which now has a common address of 2801 Calumet Avenue, Valparaiso, Indiana 46383 (“Real Estate”), which Ground Lease was subsequently amended by both a *First Amendment to Lease* dated March 25, 1975 (“First Amendment”) and *Second Amendment to Lease* dated May 29, 2014 (“Second Amendment;” collectively with the Ground Lease and the First Amendment, the “Lease”).

3. By virtue of a series of assignments, Troy Coolidge No. 30, LLC (“Troy 30”) is now the current developer under the Lease. According to the bankruptcy schedules (Doc. No. 1629) of debtor Kmart Corporation (“Kmart”), Troy 30 is a wholly owned subsidiary of Kmart.²

4. On January 18, 2019, the Debtors filed the Cure Notice.

5. On January 25, 2019, UDC filed its Cure Objection.

² Upon information and belief, Troy 30 is also the current landlord under a certain Sublease with Kmart, as tenant, under which Kmart operates a retail store at the Real Estate.

6. On April 19, 2019, the Debtors filed the Designation Notice, seeking to designate the Ground Lease as subject to the “Sale Order” and “Assumption and Assignment Order” (as such terms are defined in the Designation Notice). The Designation Notice also established May 3, 2019, as the date by which any parties that had filed timely objection to the Cure Notice could supplement such objections to include any additional costs arising subject to the filing of such objections.

7. Since the filing of UDC’s Cure Objection, Spring real estate taxes have been assessed against the Real Estate in the amount of \$28,527.54. Payment of such taxes are due May 10, 2019. A true and accurate copy of the Spring tax bill for the Real Estate is attached as **Exhibit A**.

8. Including these Spring real estate taxes with those amounts set forth in its Cure Objection, those amounts due UDC under the Lease which comprise those amounts the Debtors must cure in order to assume and assign the Lease, are set forth as follows:

ITEM	AMOUNT
Amount Due under ATM Sublease	\$17,400.00
Reimbursement (2016 taxes paid 2017 – Fall installment)	\$17,443.38
Reimbursement (2017 taxes paid Spring 2018)	\$19,296.64
Reimbursement (2017 taxes paid Fall 2018) [This represents a post-petition reimbursement]	\$ 9,230.90
Less Payment from Sears Holding (2017 paid Spring 2018)	<u>(\$19,296.64)</u>
Reimbursement (2018 taxes paid Spring 2019):	\$28,527.54
Total:	\$72,601.82

9. Accordingly, UDC’s books and records reflected that the Debtors’ indebtedness under the Lease differs from the Debtors’ proposed cure amount as follows:

Debtors' Proposed Cure Amount	UDC Cure Amount	Variance
\$746.00	\$72,601.82	\$71,855.82

10. UDC has filed this Supplemental Objection to preserve its rights with respect to the proposed sale. Again, UDC does not oppose the sale – or generally the proposed assignment and assumption of the Lease as part of such sale – but does oppose any proposed assumption and assignment that fails to cure all amounts currently due under the Lease.

OBJECTION

11. UDC restates and reasserts those objections set forth in the Cure Objection.

CONCLUSION

12. UDC has no objection to the proposed assumption and assignment of the Lease set forth in the Cure Notice, provided that the Debtors provide a cure payment in the aggregate amount of \$72,601.82.

RESERVATION OF RIGHTS

13. UDC expressly reserves any and all rights to supplement and modify this Supplemental Objection and the cure amounts claimed hereunder. This Supplemental Objection is being filed only as it pertains to the Lease. Nothing contained herein should be construed as a waiver by UDC with respect to any other rights.

MEMORANDUM OF LAW

14. This Supplemental Objection incorporates the Cure Objection that set forth specific responses with supporting law divided under numerous paragraphs. UDC respectfully requests that the requirements of the service and filing of an answering memorandum of law under Local Rule 9013-1(b) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York be deemed satisfied.

WHEREFORE, UDC respectfully requests that the Court (i) deny the relief requested in the Cure Notice and Designation Notice as it relates to UDC, (ii) order the Debtors to pay UDC the cure payment in the aggregate amount of \$72,601.82, and (iii) grant such other and further relief as the Court may deem appropriate under the circumstances.

Dated: May 2, 2019

Respectfully submitted,

**URSCHEL DEVELOPMENT
CORPORATION**

By: /s/Mark R. Owens
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